Wean United, Inc. and Patternmakers League of North America, Cleveland Association. Case 8-CA-13137

# April 15, 1981

# **DECISION AND ORDER**

On October 27, 1980, Administrative Law Judge Donald R. Holley issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and brief, and has decided to affirm the rulings, indings, and conclusions of the Administrative Law Judge, and to adopt his recommended Order, as modified herein.

# **ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Wean United, Inc., Canton, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Discouraging membership in, or employees' activities on behalf of, Patternmakers League of North America, Cleveland Association, by refusing to rehire employees because of their prior protected concerted activities while serving in the capacity of shop committeeman."

2. Substitute the following for paragraph 2(a):

- "(a) Offer Frederick Sutter immediate employment in a patternmaker position, and make him whole for any loss of pay due to the discrimination practiced against him in the manner set forth in 'The Remedy.'
- 3. Substitute the attached notice for that of the Administrative Law Judge.

# **APPENDIX**

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discourage membership in or employees' activities on behalf of Patternmakers League of North America, Cleveland Association, by refusing to rehire employees because of their prior protected concerted activities while serving in the capacity of shop committeeman.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Frederick Sutter immediate employment as a patternmaker, and WE WILL make him whole for any loss of pay he may have suffered by reason of our discrimination against him, plus interest.

# WEAN UNITED, INC.

# **DECISION**

#### STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge: Upon a charge filed by Patternmakers League of North America, Cleveland Association (herein called the Union), the Regional Director for Region 8 of the National Labor Relations Board (herein called the Board) issued a complaint on October 3, 1979, alleging, interalia, that Wean United, Inc. (herein called Respondent), refused to hire and/or recall Frederick Sutter (herein called Sutter) on or about July 30, 1979, in violation of Section 8(a)(1) and (3) of the Act. Respondent filed a timely answer denying it had engaged in the unfair labor practice alleged in the complaint.

The case was heard before me in Canton, Ohio, on March 18, 1980. All parties appeared and were afforded

<sup>&</sup>lt;sup>1</sup> Respondent excepts to the Administrative Law Judge's sequestration of Personnel Manager Griffiths, contending that it was thereby denied the assistance of any corporate representative during the hearing. We find no merit in Respondent's exception. The record shows that Respondent initially had Niedle, its director of industrial relations, enter an appearance on its behalf, and then moved to have the witnesses sequestered. Only after the Administrative Law Judge had granted this motion, and directed that all witnesses including alleged discriminatee Sutter be sequestered, did Respondent seek to have Griffiths, who was to be Respondent's principal witness, also enter an appearance and act as a representative to assist counsel throughout the hearing. Moreover, we note that Respondent's counsel at one point agreed to Griffiths' exclusion on the condition that Sutter also be excluded, although counsel later retracted that agreement. Thus, it is clear that Respondent at all times during the hearing had a designated corporate representative present. Furthermore, Respondent has not demonstrated that Griffiths was essential to the presentation of its case and that it in fact was prejudiced by his exclusion.

<sup>&</sup>lt;sup>2</sup> We adopt the Administrative Law Judge's finding that Respondent has failed to demonstrate that it would not have rehired Sutter even absent his protected concerted activity. In so doing, we additionally rely on the fact that, despite Respondent's assertion that it rehired Haines because he was a "better" employee, Griffiths testified unequivocally at the hearing that Sutter's ability as a patternmaker was not a consideration in the decision not to rehire him. Thus, it is clear that to the extent Respondent found Haines a "better" employee, it was because he was not a "troublemaker" in the sense in which Griffiths used that term, i.e., one who too vigorously engaged in protected concerted activity.

<sup>&</sup>lt;sup>3</sup> Member Jenkins would provide interest on the backpay award in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

<sup>&</sup>lt;sup>4</sup> We shall modify par. 1(a) of the Administrative Law Judge's recommended Order to conform more closely to the violation found. Further, we shall modify par. 2(a) of the recommended Order to require Respondent to offer Sutter "immediate employment in" a patternmaker position, consistent with the recommended remedy.

full opportunity to participate, to introduce and to meet material evidence, and to engage in oral argument. The General Counsel and counsel for Respondent filed posthearing briefs which have been carefully considered. On the entire record in the case, the briefs and arguments, and from my observation of the witnesses, I make the following:

#### FINDINGS OF FACT

#### I. JURISDICTION

It is uncontested, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

### II. STATUS OF LABOR ORGANIZATION

It is uncontested, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. Background

Wean United, Inc., an Ohio corporation, is engaged in the manufacture of steel and steel products at plants located in Cuyahoga Falls (Vaughn plant), Youngstown (Vandergrift plant), and Canton, Ohio. The Union was certified as the collective-bargaining representative of its Canton plant employees in 1958, and it has, at all times material herein, been a party to a collective-bargaining agreement which covers two separate seniority units at the Canton and Vandergrift plants.

The alleged discriminatee, Frederick Sutter, was hired by Respondent as a patternmaker at its Vaughn plant on August 30, 1965. On September 11, 1972, he was transferred to the patternmaker shop of its Canton plant, where he worked until he, together with four other employees, were laid off due to a reduction of force on September 8, 1975. Throughout his employment at the Canton plant, Sutter was supervised by Lou Seitz, foreman of the carpenter and patternmaker shops.<sup>2</sup>

The Canton plant patternmakers who were laid off in September 1975 each retained recall rights for 2 years, and for an additional period of up to 3 years, depending on seniority in excess of 2 years. In February 1976, at a time when all the Canton plant patternmakers then in layoff status had recall rights, Respondent decided to accomplish some patternmaker work then performed at the Canton plant at its Vandergrift plant. The Union filed a grievance when the decision was implemented claiming the patternmakers in layoff status should have been recalled to perform the work. The matter was eventually arbitrated. The arbitrator's decision was placed in the record as Respondent's Exhibit 7. It reveals, *inter alia*, that the Union claimed the work in question was sent to the Vandergrift shop because Respondent did not want

to recall Sutter as a personality clash existed between the employee and Foreman Seitz. The arbitrator found the grievance to be without merit.

In January or February 1979, Edward Bauer, plant manager of the Canton plant, told his personnel manager, Griffiths, they needed to hire a patternmaker at the Canton plant. By that time, the recall rights of the employees laid off in September 1975, including Sutter, had expired and such employees had been permanently terminated.<sup>3</sup> Respondent's refusal to fill the opening by hiring Sutter caused the Union to file the instant charge.

#### B. The General Counsel's Case

The General Counsel claims that the evidence adduced at the hearing of this case reveals that Respondent refused to rehire Sutter for the patternmaker opening which existed in early 1979 because he had been a vigorous shop committeeman and/or shop steward during 1974 and 1975. She sought to prove her assertion through the testimony of employees Sutter, John Frank, Paul Addams, Melvin Haines, and Union Business Manager Nicholas Rosenbaum. Such testimony is summarized below.

Sutter, who was described by several witnesses as "a good Union man," was chosen by his fellow patternmakers in the Canton plant as their shop committeeman in 1974. Thereafter, during 1974 and 1975, he filed some 18 grievances and participated in the 1974 contract negotiations between the Company and the Union.

It would appear that of the 18 grievances filed while Sutter was the shop committeeman, most were filed to grieve claims that Foreman Seitz was performing bargaining unit work. On one occasion, Sutter observed Seitz performing what he considered to be bargaining unit work, and he thereafter caused almost every employee in the pattern department, which then numbered 14 or 15 employees, to file a written grievance concerning the matter. At a grievance meeting held regarding the mass grievances, Griffiths, Respondent's personnel manager, indicated his displeasure with the situation by telling Sutter he had filed more grievances in a 3-year period than had been filed in a 20-year period by members of the Union. At the same meeting, Griffiths told the employee he did not feel it was appropriate to file 14 grievances on the same thing.

Sutter testified without contradiction that Griffiths indicated displeasure with him at a negotiation session in 1974 by telling him that he had engaged in improper behavior at the session by doodling the words "strike—strike" on a piece of paper while negotiations were in progress.

After Sutter was laid off in September 1975, he kept Respondent advised of his current address by mailing it a certified letter each year. While such action did not cause Respondent to attempt to contact him when it needed a patternmaker in early 1979, he testified he learned through discussion with the Union's business manager, Rosenbaum, in early March, that Respondent

<sup>&</sup>lt;sup>1</sup> The other employees were Melvin Haines, Chuck McDowell, William Morrow, and Dale Robinson.

<sup>&</sup>lt;sup>2</sup> It is admitted, and I find, that Lou Seitz and Wayne Griffiths, the Canton plant personnel manager, are, and have been at all times material, agents of Respondent and supervisors within the meaning of Sec. 2(11) of the Act. Seitz retired in May 1978.

<sup>&</sup>lt;sup>3</sup> Sutter's recall rights ended on September 5, 1978. He was terminated at that time. See Resp. Exh. 8.

needed a patternmaker. According to Sutter, he then telephoned Wayne Griffiths and indicated he would like to have the job as he had 12 years towards a pension and needed 3 more to be able to retire at age 60-62 without suffering a reduction in his pension. He testified that Griffiths told him he would not rehire him because he did not feel the Company wanted to rehire a troublemaker like him. Sutter asked, "Well, what do you mean, troublemaker?" He claims Griffiths then told him who anybody who would file 14 grievances in 1 day and take a strike sign into negotiations or force a man off his job was not the kind of person the Company wanted to employ at its plant. As the conversation ended, Sutter told Griffiths that, if he did not hear anything to the contrary from the Union, he would be down to file an application. He claims Griffiths told him he would not be given an application.

The day after he conversed with Griffiths, Sutter called the plant and asked that the then-current shop committeeman, Paul Addams, meet him at the office at a stated time. Sutter then went to the plant and, after informing Addams he wanted him to act as a witness, told the receptionist he would like a job application. She informed him the Company had people on layoff and was not taking any applications. Sutter then left and Addams went to Griffiths' office and explained what had happened. Griffiths indicated to Addams that Sutter should have been given an application and he and Addams attempted to intercept Sutter before he left the premises, but he was already gone. Griffiths then asked if Addams would be seeing Sutter, and, on being told he would, he gave Addams an application form requesting that he give it to Sutter.

Sutter testified that Paul Wagner, the assistant shop committeeman, contacted him to indicate he had an employment application for him. Sutter went to Wagner's home and got the application. He then completed the form and forwarded it to Respondent on or about March 26, 1979. Griffiths merely filed the application. A short time thereafter, he agreed to hire former patternmaker Melvin Haines, who had less seniority than Sutter when they were laid off in 1975. Haines, like Sutter, had been terminated when his recall rights expired in 1978.

In addition to Sutter's testimony, which is summarized above, the General Counsel offered limited supportive and documentary evidence to prove her contention. Thus, employee Frank testified that Sutter represented him in one grievance situation, and that Foreman Seitz told him after the 1975 layoff that Sutter was a trouble-maker and it would be a cold day in hell when he came back to Wean United. Similarly, employee Addams, who was selected shop committeeman after the 1975 layoff, testified that the grievances filed by Sutter were legitimate in his opinion. He further testified that, prior to the time Sutter contacted Griffiths about the pattern-maker opening in March 1979, Griffiths had told him he did not intend to rehire Sutter. According to Addams,

Sutter and Seitz disagreed over the way Sutter did his work, but Addams never heard the foreman express displeasure over the grievances filed by Sutter. Employee Haines merely testified that in late March he was offered the patternmaker position under discussion and he agreed to take it, but obtained Griffiths' agreement that he could start to work the end of July after a comtemplated plant shutdown had occurred.

The documentary evidence offered included copies of two grievances dated October 28, 1974, which were signed by Sutter and grieved the alleged performance of bargaining unit work by Seitz and a 1975 pattern shop seniority list, which reveals that, at the time of the 1975 layoff, Sutter was senior to Haines.

# C. Respondent's Defense

Respondent contends it chose to fill the patternmaker opening which existed in 1979 by hiring former employee Melvin Haines rather than Sutter because Haines had been the better employee while employed by it, and Sutter's conduct and manner of work during his tenure of employment at the Canton plant had rendered him offensive to fellow workers and supervisors.

While Griffiths, who made the decision to hire Haines rather than Sutter, admitted his mid-March 1979 conversation with Sutter was substantially as reported by Sutter, he claimed he actually refused to consider Sutter for the opening because he "was a troublemaker, a disturbing influence on the employees down in the shop, and he was, you know, abrasive, he was offensive." He testified that his opinion of Sutter was based on a series of incidents between Sutter and Foreman Seitz and other employees, which occurred before and after the employee became a union committeeman.

The first incident, which was described by both Griffiths and Seitz during their testimony, occurred in January 1973, shortly after Sutter was transferred to the Canton plant. On that occasion, Sutter was told by Seitz to make a wooden pattern. When the pattern was completed, Seitz observed that the pattern had been constructed in such a manner as to cause knotholes to appear on the outside surface which had to be smooth if the pattern was to be used as intended. Seitz instructed Sutter to throw the pattern away and to make a new one. After the foreman left, Sutter nailed the defective pattern on the wall next to Seitz' office and attached a note to it which stated, "Here's what I think of your fg wood, Lou." When Seitz saw the pattern on the wall and the note, he prepared a written warning citing Sutter for misuse of company property and recommended to his superiors that Sutter be given some time off. The plant manager at that time, a Mr. Karns, vetoed Seitz' recommendation that Sutter be given time off, allegedly to keep relations with the Union on an even keel. Griffiths testified that he decided to reduce the warning from a written warning to an oral warning as Sutter had just transferred into the plant. Both Scitz and Griffiths testified that they had no use for Sutter after the incident.

At some unstated time in 1974, Sutter became a committeeman. Shortly thereafter, a patternmaker named John Frank was using styrofoam to make a pattern. As

<sup>4</sup> While the General Counsel asked the employee if Seitz explained what he meant by the word "troublemaker," the witness gave several different answers which were conclusionary in form and did not purport to be quotes. The testimony is too vague to permit a finding that Seitz told the witness what he meant by the term.

the process and the material were new to him, he asked Seitz' assistance in forming a radius in the pattern. Seitz took styrofoam material to a saw, cut two pieces, and placed them in the pattern. When he left Frank's workbench, Sutter went to the bench, removed the two pieces of styrofoam placed there by Seitz, and broke them by stomping on them. Sutter then went to Seitz and told him he was going to file a grievance against him because he had performed bargaining unit work. The employee then went to Frank's bench and berated the employee while shaking his finger at him. Frank left work the remainder of the day after informing Seitz if he stayed he might hit Sutter. The incident was reported to Griffiths, who apparently made a note of it. Sutter was not disciplined as a result of the incident, allegedly because Seitz did not actually see him destroy the two pieces of styrofoam and he did not feel that three employee witnesses would testify against Sutter if that became necessary.

The third incident described by Griffiths was one which occurred during contract negotiations in 1974. At that time Griffiths testified that he and members of the Union's negotiating team were both embarrassed when Sutter, who attended the negotiations, sat on the Union's side and doodled the words "strike—strike—strike" on a piece of paper. As previously indicated, Griffiths informed Sutter that he felt his conduct was in bad taste.

The fourth incident was described by both Seitz and Griffiths. Thus, they indicated that in January 1975 Seitz temporarily promoted patternmaker Dale Robinson to patternmaker checker, a higher paid job. When Sutter learned of the promotion, he went to Seitz indicating he felt he should have been promoted instead of Robinson as he had more seniority. When Seitz informed him he had chosen the man he felt was best qualified, Sutter advised him that he intended to file a grievance. According to Seitz, Sutter then went to Robinson and told him he was going to file a grievance and name him directly in it. Robinson subsequently went to Seitz and informed him that the confrontation with Sutter had raised his blood pressure and he left the job and remained away for 22-1/2 working hours. Griffiths discussed the situation with both employees and thereafter orally informed Sutter that the Company was going on record as warning him that he was close to a violation of its rules which forbid threatening, intimidating, coercing, and interfering with other employees.5

In addition to the above-described incident, Seitz testified that patternmaker Ken Klieber went home sick after an argument with Sutter, and that, when he would leave the pattern shop, Sutter would frequently be away from his bench talking to others when he returned. Griffiths was informed of the Klieber absence and the alleged reason for it.

Through Seitz, Respondent placed the separation notice prepared at the time Sutter was laid off on September 8, 1975, in evidence. The form, prepared by Seitz, reveals, *inter alia*, that in the "Character of Service" section Seitz rated Sutter poor in "Quantity,"

"Adaptability," and "Attitude" and he recommended he not be rehired in his department or elsewhere in the plant. Feitz testified that he gave Sutter a poor attitude rating because his attitude towards supervision was bad and he was unable to accept instructions and do things the way he was told without an argument. He claimed Sutter's production was less than that of other patternmakers, and he stated that he rated him poor in adaptability because he did not want to change his methods and he felt things should be done his way rather than the way he (Seitz) wanted them done.

When Sutter's recall rights expired, he was permanently terminated by Griffiths. The employee status report prepared by Griffiths on September 18, 1978, noting the termination was effective September 5, 1978, was placed in the record as Respondent's Exhibit 8. In the "Termination" section of the report, Griffiths indicated that Sutter was not to be rehired.

In support of the claim that Seitz and Griffiths were motivated to recommend that Seitz not be rehired for legitimate reasons, Respondent caused several employee witnesses to voice their opinion of Sutter. Thus, Addams testified that "there was bad blood" between Seitz and Sutter and it began shortly after Sutter arrived at the Canton plant. He further indicated that he never heard Seitz complain because Sutter filed grievances.8 Haines, who had ridden to a convention with Seitz at an undisclosed time while working with Sutter, was asked by Seitz during the auto trip what he felt he should do about Sutter. Haines testified, "I told Lou I would fire the son of a bitch and suffer the consequences." In the same vein, patternmaker Paul Wagner indicated a personality clash existed between Seitz and Sutter and he stated that things ran smoothly at the plant with Sutter gone, but when he was there times were rough and there was always a conflict.

To prove that Haines was considered by management to be a better employee than Sutter, Respondent introduced the separation notice prepared for the employees' file at the time of the 1975 layoff and an appraisal of Haines which was prepared as he neared the end of his probationary period. Both documents, which were prepared by Seitz, label Haines a good employee.<sup>9</sup>

Finally, Griffiths sought to minimize his mid-March comments to Sutter by stating:

It wasn't the grievances I objected to. It was the manner he conducted himself.... The grievances were merely an avenue in which we came in contact with each other.

# D. Analysis and Conclusions

Recently, the Board promulgated and set forth in Wright Line, a Division of Wright Line, Inc., 251 NLRB 1083 (1980), the causation test to be utilized in the future

<sup>&</sup>lt;sup>5</sup> Griffiths prepared a letter of reprimand which he originally intended to deliver to Sutter after the incident in question. As the letter was never delivered to Sutter. I refused to receive it in evidence.

<sup>6</sup> Resp. Exh. 2.

<sup>&</sup>lt;sup>7</sup> Seitz' testimony reveals such forms were routinely prepared for all employees laid off.

<sup>\*</sup> Addams was assistant shop committeeman under Sutter and became the shop committeeman when Sutter was laid off.

<sup>9</sup> Resp. Exhs. 10 and 11.

in cases alleging discriminatory discharge in violation of Section 8(a)(3) or (1) of the Act, stating (at 1089):

First, we shall require that the General Counsel make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

In the instant case, the General Counsel proved a strong prima facie case of discrimination by showing that employee Sutter had served as shop committeeman during 1974 and 1975; that Personnel Manager Griffiths had indicated on several occasions that he was displeased with Sutter's actions undertaken while the employee was acting in the capacity of a shop committeeman; and that, when Sutter contacted Griffiths in mid-March to ask that he be hired to fill the patternmaker opening, Griffiths told him they did not want to hire a troublemaker, which he defined as a man who would file 14 grievances on the same day over the same thing or bring a strike sign to negotiations or run men off the job. I find the above-summarized facts compel a conclusion that Sutter's union activities constituted a "motivating factor" in the decision to refrain from hiring him in mid-March 1979.

Remaining for discussion is Respondent's contention that Sutter's poor attitude and his abrasive personality, rather than his union activities, caused Griffiths to refuse to consider him for the patternmaker opening in early 1979. The evidence offered by Respondent in support of its contention fails to convince me that Sutter would have been refused rehire consideration had he never served as shop committeeman.

In the first instance, I attach significant weight to what Sutter was told when he called Griffiths in mid-March 1979, and asked for the patternmaker job. Griffiths told him he would not consider him because he was a troublemaker. Griffiths then defined a troublemaker as one who would file 14 grievances in the same day on the same thing or one who would take a strike sign to negotiations. Patently, Griffiths was referring to Sutter's actions during the "styrofoam" incident and the 1974 contract negotiations described supra. While Griffiths may not have appreciated Sutter's actions during the incidents in question, it is clear that Sutter was engaging in protected concerted activity in both situations. It naturally follows that Griffiths could not lawfully refuse to consider Sutter for rehire because of the employee's actions during the "styrofoam" or the 1974 bargaining incidents. It certainly appears that Griffiths did precisely what he was not legally entitled to do.

I attach little weight to that evidence offered by Respondent to show that Sutter was insubordinate on an occasion in 1973, and that he allegedly coerced employees and caused them to leave work in 1974 and 1975, as Respondent inflicted little, if any, punishment upon Sutter at the time of the incidents. As the employees involved in the alleged coercion incidents were not called as witnesses, I have no way of determining whether

Sutter was engaging in protected or unprotected activity during the occasions described.

In sum, for the reasons described, I find that Respondent has failed to demonstrate by probative evidence that Sutter would have been refused rehire in mid-March 1979, even in the absence of his activities as a shop committeeman during 1974 and 1975. To the contrary, I find that he was refused rehire at that time because of his actions as shop committeeman in violation of Section 8(a)(3) and (1) of the Act.

# IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### CONCLUSIONS OF LAW

- 1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
- 3. By refusing to hire Frederick Sutter to fill a patternmaker position because said employee's participation in union activities rendered him a troublemaker, Respondent violated Section 8(a)(3) and (1) of the Act.
- 4. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

# THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Respondent will be required to offer Frederick Sutter a position as patternmaker at its Canton, Ohio, plant. Additionally, Respondent will be ordered to make the employee whole for any loss of earnings he suffered, if any, as a result of Respondent's mid-March 1979 refusal to consider him for the patternmaker opening which then existed in its Canton, Ohio, plant, with backpay to be computed on a quarterly basis, making deductions for interim earnings, and with interest to be paid in accordance with the Board's decisions in F. W. Woolworth Company, 90 NLRB 289 (1950), and Florida Steel Corporation, 231 NLRB 651 (1977). 10

Upon the foregoing findings of fact, conclusions of law, and upon the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

<sup>10</sup> See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

# ORDER11

The Respondent, Wean United, Inc., Canton, Ohio, its officers, agents, successors, and assigns, shall:

- 1. Cease and desist from:
- (a) Discouraging membership in, or employees' activities on behalf of, Patternmakers League of North America, Cleveland Association, by refusing to consider employees who act in the capacity of committeeman for job openings arising at Respondent's Canton, Ohio, plant.
- (b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action which is found necessary to effectuate the purposes and policies of the Act:
- (a) Offer Frederick Sutter immediate reinstatement to a patternmaker position, and make him whole for any loss of pay due to the discrimination practiced against him in accordance with the manner set forth in "The Remedy."
- <sup>11</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

- (b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records, and reports and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (c) Post at its plant in Canton, Ohio, copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.
- (d) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

<sup>&</sup>lt;sup>12</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."